

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

LUCILLE WILLIAMS,

Appellant

v.

SOUTHERN UNION COMPANY, ET AL.,

Respondent

DOCKET NUMBER WD73013

DATE: November 15, 2011

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Ann Mesle, Judge

Appellate Judges:

Division One
Alok Ahuja, P.J., Thomas H. Newton, and James Edward Welsh, JJ.

Attorneys:

David Bony, Kansas City, MO

Counsel for Appellant,

Attorneys:

Truman Eldridge, Jr., Kansas City, MO

Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**LUCILLE WILLIAMS, Appellant, v.
SOUTHERN UNION COMPANY, ET AL., Respondent**

WD73013

Jackson County

Before Division One Judges: Ahuja, P.J., Newton, and Welsh, JJ.

Lucille Williams appeals the circuit court's judgment dismissing her petition against Southern Union Company d/b/a Missouri Gas Energy (MGE) and Jeffery Harris, an employee of MGE, for malicious prosecution, outrageous conduct--fraud, and intentional wrongful interference with utility service. Williams contends that the circuit court should not have dismissed her malicious prosecution claim because Missouri's savings statute was not triggered by the striking of her pleadings in her first suit against MGE and Harris. Further, she asserts that collateral estoppel does not apply to her claims for outrageous conduct--fraud and intentional wrongful interference with utility service because (1) there was not a final judgment in the prior adjudication on the same issues, (2) MGE's Tariff Number 8 permitted her to file a lawsuit without first exhausting her administrative remedies, and (3) she did not have a full and fair opportunity to litigate the issues in the prior lawsuit.

Affirmed in part and reversed and remanded in part.

Division One holds:

(1) The circuit court properly dismissed Williams's claim for malicious prosecution because Williams's claim for malicious prosecution was barred by the statute of limitations and was not saved under Missouri's savings statute. The circuit court's striking of Williams's pleadings in her first suit against MGE and Harris amounted to a nonsuit; therefore, Williams used the savings statute to save her claim for malicious prosecution when she filed the second suit against MGE and Harris. Thus, on her third suit against MGE and Harris, Williams could not use the savings statute to "save" her malicious prosecution claim because the savings statute could only be used once.

(2) The circuit court erred in granting MGE's and Harris's motion to dismiss her claims for outrageous conduct--fraud and intentional wrongful interference with utility service due to collateral estoppel. In a prior adjudication on the same issues, Williams voluntarily dismissed the entire action. This voluntary dismissal wiped the slate clean and allowed Williams to avoid any preclusive effect the dismissal of her claims by the circuit court in a prior adjudication might otherwise have had. Thus, because there was not a final judgment in the prior adjudication on the same issues, collateral estoppel does not apply.

Opinion by James Edward Welsh, Judge

November 15, 2011

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